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Proposals and contributions received from Governments

Bolivia: position paper regarding the terms of reference for the United Nations Convention against Corruption

1. In pursuance of its international obligations, Bolivia is currently preparing a series of drafts of anti-corruption legislation, the main text being the preliminary draft of the law on countering corruption.

2. The task of preparing this draft legislation has been approached within the context of concepts such as political will, accountability, civil society, social control, transparency and corruption. Analysis of the issues leads to the unavoidable conclusion that the phenomenon of corruption is bound up with complex relations with the State, which has no convincing response to offer in the fight against this scourge.

3. A review of both the press and the broadcast media shows, for instance, that government services do not enjoy the sympathy of the public, which has less than complete confidence in the honesty of public officials, whether in the executive, judicial or legislative branches.

4. A survey of experience gained in other countries in the fight against corruption shows that efforts in this field are being conducted on the basis of the principles of integrity, sustainability and a sincere will on the part of the State to achieve success. In accordance with those precepts, the proposed legislation incorporates elements from recognized international instruments such as the Inter-American Convention against Corruption[1] and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development.[2]

5. The problem of corruption produces effects in three different spheres of national affairs, namely the economic, political and social spheres. As regards the first of these, figures quoted by the press indicate that Bolivia has lost some

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$450 million as a result of dishonest practices in public administration, which gives an idea of the economic impact of corruption.

6. In the political and social areas, the cost of such unlawful conduct imperils the representative and moral standing of the authorities and undermines the legitimacy of the democratic system and its institutional structures, thus compromising the governability and moral integrity of the nation.

7. Taking a strategic view of the war on corruption, it is crucial to ensure, for example, that the definitions and terminology used in the provisions of the future law are consistent with the nature of the phenomenon. Another important point is the need to review the classification of criminal offences for which increased sanctions are imposed, bearing in mind the fact that such violations of the law undermine public confidence in the country's future.

8. The establishment of an anti-corruption agency is regarded as a fundamental element of this strategic view, an element of such importance, in fact, that the appointments in question are to be made by the Chamber of Deputies, a fully representative, democratic and multi-party body, and after consultation also with civil society.

9. Accordingly, a legal framework for the anti-corruption body is proposed in order to provide a mechanism for ensuring the lawfulness of investigatory efforts and measures to prevent the spread of corrupt practices, one essential feature of the body being its administrative and financial independence. This entity will operate within the sphere of public administration and also in the private sector in relation to administrative action, its appointees enjoying wide-ranging powers while also being liable under penal, civil and administrative law.

10. An example of the fact that the legislation in Bolivia is not complied with or, if it is, it is not "respected", is the fact that the entirely laudable idea of declaring assets under oath is not enforceable in practice because there is no provision for comparing declared and actual assets. This situation amply demonstrates the need for a state response to be combined with action by civil society to counter corruption.

11. The provisions established in the current preliminary draft law are not prejudicial to or incompatible with international treaties and conventions or other instruments of international law.

12. The preliminary draft law that has been adopted contains comprehensive provisions covering all forms of corruption, including the main criminal offences listed in the above-mentioned terms of reference such as transnational corruption and bribery, abuse of influence, the awarding of contracts against state interests, corrupt practices or illicit financial activities damaging to the economy, conflict of interest, failure by financial operators to fulfil their obligations and so forth. Some of these are provided for in the Criminal Code of Bolivia and in the current preliminary draft legislation with stricter sanctions for aggravated offences.

13. Like the entire international community, the Government of Bolivia is concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development.

14. The Government of Bolivia is convinced that, since corruption is a phenomenon that transcends national borders and affects the whole of society and all economies, international cooperation is essential for its prevention and control.

15. By a law of 15 January 1997, the Government of Bolivia approved and ratified the Inter-American Convention against Corruption and, pursuant to its obligation under that Convention, is currently preparing the aforementioned draft law on countering corruption, the purpose of which is to promote and strengthen the mechanisms needed to prevent, detect, punish and eradicate corruption and to ensure the effectiveness of measures to counter corruption in the performance of public functions and related activities. It therefore fully supports the main elements of the draft United Nations Convention against Corruption.

16. The classification of acts of corruption under the Inter-American Convention against Corruption entails an obligation to establish them as criminal offences under Bolivian domestic law, essentially with the aim of preventing acts of corruption that undermine the integrity of the Bolivian democratic system.

Notes

[1] See E/1996/99.

[2] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).